

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

CLINT PHILLIPS, III,)
)
)
Plaintiff,)
)
)
v.) No. 4:24-CV-00008 HEA
)
)
THREE UNKNOWN POLICE OFFICERS)
et al.,)
)
Defendants.)

OPINION, MEMORANDUM AND ORDER

This matter is before the Court upon review of plaintiff's handwritten complaint. The complaint is defective because, among other things, it was not drafted on the Court's form, *see* E.D. Mo. Local Rule 2.06(A), and plaintiff's allegations are conclusory and fail to explain how any particular individual¹ was personally responsible for violating his rights. In addition, plaintiff has neither paid the \$402 filing fee nor filed a motion for leave to proceed in forma pauperis.²

Because plaintiff is proceeding pro se, the Court will allow him to file an amended complaint on the Court's form. Plaintiff has twenty-one (21) days from the date of this Order to file an amended complaint in accordance with the specific instructions set forth here. All claims in the action must be included in one, centralized complaint form. *See* Fed. R. Civ. P. 7(a)(1), 8(a).

¹In general, fictitious or unknown parties may not be named as defendants in a civil action. *Phelps v. United States*, 15 F.3d 735, 739 (8th Cir. 1994). An action may proceed against a party whose name is unknown, however, if the complaint makes sufficiently specific allegations to permit the identity of the party to be ascertained after reasonable discovery. *Munz v. Parr*, 758 F.2d 1254, 1257 (8th Cir. 1985).

²A motion for leave to proceed in forma pauperis should be filed on a Court form and should be accompanied by a statement of the applicant's financial information. A certified copy of plaintiff's inmate account statement for the six-month period immediately preceding the filing of the complaint is required by 28 U.S.C. § 1915(a)(2). Alternatively, plaintiff may pay the full \$402 filing fee in this action.

Based on a review of cases previously filed by plaintiff, it appears that the allegations raised in the present action could be the same, or substantially similar, to those in other suits before this Court. *See, e.g., Phillips v. Spraggins*, No. 4:24-cv-00012 SEP (alleging false arrest). Plaintiff's amended complaint should be clear on how the claims raised in this matter differ from those being considered in other cases in this Court.

In addition, plaintiff is warned that the filing of an amended complaint replaces the original complaint and all previously-filed pleadings, so plaintiff must include each and every one of the claims he wishes to pursue in the amended complaint. *See, e.g., In re Wireless Telephone Federal Cost Recovery Fees Litigation*, 396 F.3d 922, 928 (8th Cir. 2005). Any claims from the original complaint, supplements, and/or pleadings that are not included in the amended complaint will be deemed abandoned and will not be considered. *Id.* The allegations in the complaint may not be conclusory. Instead, plaintiff must plead facts that show how each and every defendant he names is personally involved in or directly responsible for the alleged harm. If plaintiff wishes to sue a defendant in his or her individual capacity, plaintiff must specifically say so in the amended complaint. If plaintiff fails to sue a defendant in his or her individual capacity, this action may be subject to dismissal as to that defendant.

All of plaintiff's claims should be clearly set forth in the "Statement of Claim." If plaintiff fails to file an amended complaint on the Court's form within twenty-one (21) days and in compliance with the Court's instructions, the Court will dismiss this action without prejudice and without further notice.

Accordingly,

IT IS HEREBY ORDERED that the Clerk of Court shall mail to plaintiff copies of the Court's Prisoner Civil Rights Complaint form and Motion to Proceed in Forma Pauperis – Prisoner Cases form.

IT IS FURTHER ORDERED that, within **twenty-one (21) days** of the date of this Order, plaintiff shall file an amended complaint on the Court-provided form and in compliance with the Court's instructions.

IT IS FURTHER ORDERED that, within **twenty-one (21) days** of the date of this Order, plaintiff shall either pay the filing fee or submit a motion to proceed in forma pauperis on the Court-provided form. If plaintiff files a motion to proceed in forma pauperis, he shall also submit a certified copy of his inmate account statement for the six-month period immediately preceding the filing of the complaint.

IT IS FURTHER ORDERED that if plaintiff fails to file a motion to proceed in forma pauperis, along with his account statement, within twenty-one (21) days of the date of this Order, he is responsible for paying the \$402 filing fee.

IT IS FURTHER ORDERED that plaintiff's failure to timely comply with this Order shall result in the dismissal of this action, without prejudice and without further notice.

Dated this 5th day of January, 2024.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE